

***United States Court of Appeals
for the Second Circuit***



**PETITION FOR
REHEARING**

76-4151

76-4153

B

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

No. 76-4151, 76-4153

GREENE COUNTY PLANNING BOARD, et al.

Petitioners

v.

FEDERAL POWER COMMISSION,

Respondent

POWER AUTHORITY OF THE STATE OF NEW YORK

Intervenor

REPLY BRIEF OF PETITIONERS
GREENE COUNTY PLANNING
BOARD AND TOWN OF
GREENVILLE ON REHEARING
EN BANC



March 25, 1977

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IN THE UNITED STATES
COURT OF APPEALS FOR
THE SECOND CIRCUIT

Greene County Planning Board, et al.,

Petitioners

v.

Federal Power Commission,

Respondent

Power Authority of the
State of New York et ano.

Intervenors

Nos. 76-4151
and 76-4153

REPLY BRIEF OF PETITIONERS
GREENE COUNTY PLANNING
BOARD AND TOWN OF
GREENVILLE ON REHEARING
EN BANC

This brief is filed on behalf of Petitioners Greene County Planning Board, Town of Greenville ("Greene County") in reply to the briefs of the Respondent Federal Power Commission and Intervenor Power Authority of the State of New York on this rehearing en banc.

PASNY asserts at page 16 of its brief that Greene County is not properly before this court. This is erroneous since the February 15, 1977 order of this court granting a rehearing en banc expressly granted the petition for rehearing filed by Greene County. However, the rehearing was to be limited to the issue raised in such petition concern-

ing the reimbursement of counsel fees and expenses.

On December 20, 1976 Greene County filed with this court a petition for rehearing and suggestion for rehearing en banc. The petition requested a rehearing on a variety of issues. One of these issues was stated in the petition to be as follows:

"The decision...erroneously overlooks Greene County in its remand to the Federal Power Commission ("FPC") of requests for reimbursement of litigation expenses."

No other petitioner in this case filed a petition for rehearing.

On February 15, 1976 this court granted rehearing en banc in an order which stated:

"A petition for rehearing containing a suggestion that the action be reheard en banc having been filed by counsel for both the petitioners and respondent, a majority of the court has voted to grant reconsideration en banc limited to the question whether the Federal Power Commission is authorized to reimburse the intervenors for counsel fees and expenses." [emphasis added]

This order clearly granted that portion of Greene County's petition for rehearing which requested reconsideration on the issue of whether the Federal Power Commission was authorized to reimburse it for litigation expenses.

Therefore, Greene County is properly before this court in this rehearing en banc.

For the reasons stated in our main brief, and in the brief and reply brief of petitioners Town of Durham and Association for the Preservation of Durham Valley, the reimbursement request of Greene

County should be remanded to the Federal Power Commission for reconsideration.

March 25, 1977

Respectfully submitted,

Robert J. Kafin

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March 25, 1977

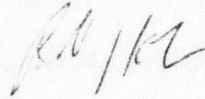
Hon. A. Daniel Fusaro, Clerk
U.S. Court of Appeals
for the Second Circuit
U.S. Courthouse
Foley Square
New York, New York

Re: Greene County Planning Board
vs. F.P.C. (Nos. 76-4151; 76-4153)

Dear Mr. Fusaro:

Enclosed is the original and 25 copies of the reply
brief of Petitioners Greene County Planning Board and Town of
Greenville on rehearing en banc in the above, with proof of
service.

Very truly yours,



Robert J. Kafin

RJK:pgh
Enc.

cc: Barry H. Garfinkel, Esq.
Scott B. Lilly, Esq.
Bernard T. King, Esq.
Philip R. Telleen, Esq.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the reply brief of Petitioners Greene County Planning Board and Town of Greenville on rehearing en banc by mailing copies thereof to counsel at the addresses listed below:

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March 25, 1977

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